Aff'd
Wales for appellant. Judge Davis
Judge Hunt Absent
Dennis

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~159~~ 216

THE STEAMER LUCILLE, JAMES A. GAREY, PRESIDENT, ETC., CLAIMANT, APPELLANT,

vs.

WASHINGTON H. RESPASS, THOMAS TURNER, N. F. STIRLING, (BY HIS NEXT FRIEND, WILLIAM H. RESPASS,) AND EVANS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED DECEMBER 1, 1871.

Dec. 1, 1871

# SUPREME COURT OF THE UNITED STATES.

## No. 453.

THE STEAMER LUCILLE, JAMES A. GAREY, PRESIDENT, ETC., CLAIMANT, APPELLANT,

vs.

WASHINGTON H. RESPASS, THOMAS TURNER, N. F. STIRLING (BY HIS NEXT FRIEND, WILLIAM H. RESPASS,) AND EVANS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday, in November, (being the seventh day of the same month, (in the year of our Lord one thousand eight hundred and seventy.

Present, the Honorable Hugh L. Bond, circuit judge fourth circuit; Archibald Sterling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

STEAMER LUCILLE, APPELLANT,
*vs.*
WASHINGTON H. RESPASS, THOMAS TURNER, Noah F. Stirling, by his next friend William H. Respass, and Evans.

Be it remembered that heretofore, to wit, on the 25th day of October, in the year of our Lord one thousand eight hundred and sixty-nine, the owners and claimants of the steamer Lucille, by W'm S. Waters, their proctor, filed in the circuit court here the transcript of a record from the district court of the United States in and for the Maryland dis-
2 trict, in the words and of the tenor following, to wit:

*Transcript.*

THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

At a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore on the first Tuesday of March, (being the second day of the same month,) in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the Honorable William F. Giles, judge of Maryland district; Andrew Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

WASHINGTON H. RESPASS, THOMAS TURNER, Noah T. Stirling, by his next friend William H. Respass and Evans,
*vs.*
STEAMER LUCILLE.
Libel filed 2d Jan'y, 1869.

*Libel.*

3 In admiralty.

To the Hon. William F. Giles, judge of U. S. district court for the district of Maryland.

Washington H. Respass, Thomas Turner, Noah T. Sterling, a minor, by his next friend W'm H. Respass, of Matthews County, Virginia, and Evans, of Accomac County, Virginia, owners of sch'r Champion hereinafter mentioned, exhibit this their libel against the steamboat Lucille, whereof William Harrington is, or lately was, master, now lying at the port of Baltimore, in the district aforesaid, and within the

admiralty and maritime jurisdiction of this honorable court, her engine, machinery, sails, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, and thereupon the libellants allege and articulately propound as follows, to wit:

First. That the said schooner is a vessel of thirty-one tons burthen or thereabouts, and, at the time when the cause of action hereinafter mentioned and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between various places on the Chesapeake Bay and its tributaries.

Second. That, on or about the 19th day of December, A. D. 1868, the aforesaid schooner being tight, staunch, and well manned, and
4 provided, sailed from Milford Haven, in Virginia, with a valuable cargo of oysters on a voyage to the port of Baltimore aforesaid.

Third. That, during said voyage, to wit, about half past one o'clock a. m., on the 20th day of December, A. D. 1868, the said schooner being then about five miles from the western shore of said bay and a little above Cove Point, with the wind blowing a light breeze from the east-southeast, her sails being well out on the port-side, the courses of the vessel being north by west, the mate of the schooner being on the look-out descried lights ahead, and soon after discovered that they were borne by a steamboat approaching said schooner from a northerly direction. The said mate informed the master of said schooner, who then had the helm of said schooner, of the direction and approach of the steamer, and told the said master to hold his course, believing that said steamboat would pass the schooner on the starboard hand; that notwithstanding these precautions against collision, the said steamboat struck the said sch'r stem on, on her starboard bow, and so greatly injured said schooner that she immediately filled with water, and, in spite of all exertions that could be made on the part of all on board said schooner to keep her afloat, she soon thereafter sunk and was, with her cargo, totally lost, two of her crew having been drowned by the collision.

5 Fourth. That the said steamboat, by which the damage had been done, proved to be the Lucille aforesaid, under the command of said Harrington as master thereof, and being of about 514 tons burthen, bound on a voyage from Baltimore aforesaid to Wilmington, in the State of North Carolina; that, at the time when her lights were first discovered from the said schooner Champion, as hereinbefore mentioned, the said sch'r carried the lights at the proper place required by law to be carried by vessels under sail, which lights remained in their proper position until she was struck by the steamer and sunk as aforesaid; and although there was a slight haze on the water, the said lights could easily have been seen; and if said steamer kept a good look-out, (and she had also a good look-out at the proper place,) must have been seen by such look-out at least half a mile, and in season to have enabled her to give way for the schooner, as she was bound to do, and thereby prevent a collision therewith.

Fifth. That the said collision was caused wholly by the gross negligence, mismanagement, carelessness, and unskillfulness of those navigating the said steamer Lucille, and that at the time when the danger of a collision between the two vessels was first perceived from the Champion it was impossible for her to get out of the way of said steamer, nor were there any means to which she could with propriety have resorted for that purpose.

6 Sixth. That, at the time of the aforementioned loss of the said schooner and her cargo, the libellants were the true and lawful owners of said schooner and her said cargo, and that the said schooner was of the value of two thousand eight hundred dollars and the said cargo was of the value of eight hundred dollars or thereabouts; that, by reason of the sinking of said boat, they have been deprived of carrying on their business of running oysters at a season when such business was most profitable to them, involving a loss to them on this account of at least one thousand dollars; and that, by reason of the careless, negligent, and unskillful and improper management of the said steamboat Lucille and of the collision thereby occasioned of the said steamboat with the said schooner Champion, the libellants have sustained damages to the amount of four thousand six hundred dollars or thereabouts, for which they claim reparation in this suit.

Seventh. That all and singular the premises are true. Wherefore the libellants pray that process in due form of law may issue against the said steamboat Lucille, her engine, machinery, sails, boats, tackle, apparel, and furniture; and that this honorable court will pronounce for the damages, and decree the same to be paid, with costs, and for such other and further relief and redress as to right and justice may
7 appertain and the court is competent to give in the premises.

JOHN M. FRAZIER,
*Proctor for Lib'Pts.*

*Attachment.*

THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

To the marshal for the Maryland district, greeting:

We command you that you attach, seize, take, and safely keep st'r Lucille, her boats, tackle, apparel, and furniture, to answer the libel of Washington H. Respass, Thomas Turner, William H. Respass, and Evans, in a cause of collision, civil and maritime; and how you shall execute this precept you make known to us in our district court for the district aforesaid at the United States court-room, in the city of Baltimore, on the first Tuesday of March next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said district court, this first Tuesday of December, in the year of our Lord one thousand eight hundred and sixty-eight.

Issued 2nd day of January, 1869.

[SEAL.]

JAMES W. CHEW,
*Clerk District Court.*

8 *Marshal's return.*

Att'd Jan'y 2nd, 1869.

W. BONIFANT,
*U. S. Marshal.*

*Claim.*

To the Hon. William F. Giles, judge of the district court of the United States for the district of Maryland.

James A. Garey, president of the Baltimore and Southern Steam-Transportation Company, intervening for the interest of said company in the steamer Lucille, appears before this honorable court and claims

the said steamer Lucille, her tackle, apparel, and furniture, and states that the Baltimore and Southern Transportation Company is the true and bona-fide owner of said steamer, and that no other person is owner thereof. And thereupon the said claimant prays that this honorable court will be pleased to decree a restitution of the same to him, and otherwise right and justice to administer in the premises.

JAMES A. GEARY, *President.*

Subscribed and sworn to before me this 2nd day of January.

ISAAC BROOKS, JR.,
*U. S. Commissioner in and for the District of Maryland.*

9 *Stipulation.*

THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

Be it remembered that, on this second day of January, in the year of our Lord one thousand eight hundred and sixty-nine, before me, Isaac Brooks, jr., a commissioner appointed by the circuit court of the United States, for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appear James A. Garey, president of the Baltimore and Southern Steam Transportation Company, and Thomas Corner, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators, to be bound in the sum of nine thousand two hundred dollars for the claimant of the steamer Lucille, unto Washington H. Respass and others, to perform and fulfil the final order and decree of the said district court, and in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in and for the Maryland district,
10 and in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the said district court, wherein the said Washington H. Respass and others are libellants, and the claimant of the said steamer Lucille is respondent, and unless they so do, they severally consent that execution shall issue against them, their heirs, executors, and administators, their goods, chattels, lands, and tenements, wheresoever found or to be found. Acknowledged before

ISAAC BROOKS, JR.,
*United States Commissioner in and for the District of Maryland.*

*Answer.—Filed 2nd March*, 1869.

To the Honorable William Fell Giles, judge of the district court of the United States for the district of Maryland.

The answer of James A. Garey, president of the Baltimore and Southern Steam Transportation Company, to the libel filed against the steamer Lucille in this court, by Washington H. Respass and others, respectfully represents:

1st. That the said Baltimore and Southern Steam Transportation

Company is the true and lawful owner of the said steamer Lucille,
11 and that no one else is the owner thereof, and that this respondent is the president and agent of said company.

2nd. That he has no knowledge of the schooner Champion described in said libel, or who were her owners, or how she was employed, except as hereinbefore particularly stated.

3rd. That he has no knowledge of the voyage undertaken by said schooner Champion on the 19th of December, 1868, except as is hereinafter particularly stated.

4th. This respondent has no knowledge of the collision between the schooner Champion and the steamer Lucille, described in said libel, except from the information derived from those present; and from such representations, and not of his own knowledge, he avers that he does not believe that the facts in the said libel contained, purporting to describe the said collision, are true, but he avers the truth in his behalf to be, that on the night of the 19th of December, 1868, the said steamer Lucille, under the command of Captain Harrington, being well manned and equipped, with a moderate cargo on board, started from the port of Baltimore on a voyage to Wilmington, North Carolina; that about one o'clock of the morning of the 20th of December, 1868, just above the mouth of the Patuxent River in the Chesapeake Bay, she discovered the schooner Champion on her port-bow, considerably to the eastward of said steamer, proceeding up the bay, loaded; that the Lucille
12 was proceeding south by east, half east, and the sch'r was proceeding in an opposite direction in a line parallel with said steamer, having the wind free and under mainsail, foresail, and jib; that had both vessels continued their course no collision could possibly have occurred. And the vessels would have passed each other a considerable distance apart, but that without any danger prompting, and from pure negligence and want of care, the said schooner, when she was nearly opposite the said steamer, changed her course to the westward and came directly on the said steamer; that as soon as this change of course occurred on board the Lucille was given to stop and back, and to port the wheel; that these orders were instantly obeyed, but that it was impossible by any precaution on the part of said steamer, after said schooner so changed her course, to avoid a collision; that the said schooner Champion, still advancing, struck the bow of the steamer on her port side with the starboard-bow of the said schooner and in a few moments after said collision the said schooner sunk; that said steamer had the proper lights required by law, and they were trimmed and burning; that she had a lookout stationed in her bow, the most advantageous position for that object, and the said lookout was in the faithful discharge of his duty.

13 5th. That, as this respondent is informed and believes, the collision was caused by the negligence and improper conduct of the Champion, and not as alleged in said libel; that every effort was made that could have been made by the Lucille to avoid said collision, and that the entire cause of the same was the conduct of those on the Champion.

6th. This respondent has no knowledge of the value of the Champion or her cargo, but requires that strict proof should be made of the ownership of said schooner, her value, and of all damage accruing to libellants by reason of said collision. And this respondent is advised that the loss of business alleged in said libel is not an item of damage for which recovery can be had.

7th. That all and singular the premises are true, as this respondent is informed and believes, as above stated.

This respondent prays that said libel may be dismissed with costs.

JAMES A. GAREY, *Pres't.*

Subscribed and sworn to before me this 2nd day of March, 1869.

ISAAC BROOKS, Jr.,
*U. S. Commissioner in and for the District of Maryland.*

*Decree.*

14 In the U. S. district court for the district of Maryland.

WASHINGTON H. RESPASS AND OTHERS
*vs.*
STEAMER LUCILLE.

This cause standing ready for hearing, and the evidence having been heard and considered by the court, it is thereupon adjudged and decreed by the said court this 12th day of March, A. D. 1869, that there is due the libellants for damages in said cause, the sum of two thousand eight hundred ($2,800.00) dollars, and that James A. Garey and Thomas Corner, the stipulators in said cause, pay to said libellants the aforesaid sum of two thousand eight hundred dollars, together with the costs to be taxed by the clerk of this court, or bring the said amount into court to be paid to the libellants within twenty days from the date.

WILLIAM F. GILES.

From which said decree so as aforesaid rendered, the said owners and claimants of the steamer Lucille, by their proctors aforesaid, in open court here, have prayed an appeal to the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore, on the first Monday of November next.

Thereupon, it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same are hereby transmitted accordingly.

15

*Appeal bond.—Filed 22nd April, 1869.*

Know all men by these presents, that we, The Baltimore and Southern Steam Transportation Co., and W. H. Baldwin, jr., are held and firmly bound unto Washington H. Respass, Tho's Turner, and William H. Respass, of Matthews County, Virginia, and Noah T. Stirling, by William H. Respass, his next friend, and Evans, of Accomac County, Virginia, owners of schooner Champion, in the just and full sum of three hundred dollars, lawful money of the United States, to be paid to the said obligees, their heirs, executors, administrators, or assigns: To which payment well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators jointly and severally, firmly by these presents, sealed with our seals and dated this first day of April, 1869.

Whereas heretofore, to wit, on the second day of January, 1869, Washington H. Respass, Thomas Turner, William H. Respass, of Matthews County, Virginia, and Noah T. Stirling, by W'm H. Respass, his next friend, and Evans, of Accomac County, Virginia, owners

of the schooner Champion, filed their libel in the district court of
16 the United States, in and for the Maryland district, against The Steamer Lucille, in a cause of collision:

And whereas, at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore on the 12th day of March, in the year of our Lord one thousand eight hundred and sixty-nine, by the decree of the said court the libellants recovered the sum of two thousand eight hundred dollars, with interest from 12th day of March, 1869, and costs, from which said decree so as aforesaid the owners of the steamer Lucille have prayed an appeal to the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday of April, 1869:

Now, the condition of the above obligation is such that if the owners of the steamer Lucille shall well and truly prosecute with effect their said appeal, and pay to the said Washington H. Respass, Thomas Turner, William H. Respass, of Matthews Co., Va., Noah T. Stirling, by William H Respass, his next friend, and Evans, of Accomac Co., Va., owners of schooner Champion, the amount of their said decree, interest, costs, and charges decreed unto them by the said district court, and, also, all such damages as may be awarded unto them
17 by the said circuit court in case the said appellants shall fail to make good their said appeal, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

JAMES A. GAREY, [SEAL'S PLACE.]
*Pres't of Southern St. Trans. Company.*
W. H. BALDWIN, JR. [SEAL.]

Signed, sealed, and delivered in presence of—

As proctor for libellants, I approve the foregoing bond.
JNO. M. FRAZIER.

(Endorsed:)

"Bond approved."
WILLIAM F. GILES.

22ND APRIL, 1869.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I have hereunto subscribed my name and affixed the seal of said district court this 25th day of October, in the year of our Lord one thousand eight hundred and sixty-nine.
[SEAL.]
JAMES W. CHEW,
*Clerk District Court.*

18 *Deposition of Edward Conway, a witness for the respondents, taken before John S. Hanan, United States commissioner, at Baltimore City, the 12th day of February*, 1869.

I am a seaman on board of the steamer Lucille; have been so engaged for four months. I have been a sailor for 10 or 11 years. I was on board the steamer Lucille on the 19th and 20th of December, 1868, when a collision occurred between the steamer and the schooner Cham-

pion. The steamer Lucille is a sea-going vessel. We left Baltimore on the 19th of December, bound for Wilmington, North Carolina. She had a tolerable cargo, but not fully loaded. Capt. Harrington was her captain. Mr. Lee was mate. Mr. Courtney was 2nd officer. I don't know the names of the seamen. There were three in all beside myself. It was cold night, cloudy, and snowing a little occasionally. It was a night when the moon was up, but it was cloudy; the moon could not be seen. There was nothing occurred worthy of notice till we got four miles above Patuxent River, in the Chesapeake Bay. I was on the lookout. I saw the schooner's red light—the port light. I reported the light to Mr. Lee, the 1st officer, who was on duty. The schooner was well to the eastward of us. When I saw her the second time she was coming right for us. I reported her again, and the steamer
19 was stopped. The schooner struck our port bow with her starboard bow. The schooner then dropped astern of us about 50 yards. Capt. Harrington hailed the schooner to know if she was damaged, and the reply was that she was sinking, and to come alongside. I was right forward in the bow of the steamer, stationed as a lookout. When I first saw the schooner's lights she was two miles, probably further, off. I do not know the course we were running; I was not at the wheel. The wind blew from the southward and eastward. It was a moderate good whole sail breeze. The schooner was, when I first saw her, to the southward and eastward of us, but I can't say how far to the eastward. If the vessel and the steamer had *had* continued the same course they were going when I first saw the schooner, there could have been no collision. I did not keep my eye on her. I reported her to Mr. Lee, in charge of the vessel. I saw her once or twice before I saw her coming towards , after I first saw her. At these times I saw only her port light. When I saw her coming right for us she was only about 150 yards distant. I could see her hull and both lights. She struck us about 8 or 10 feet forward of the fore chains, and about the same distance from our prow. We got alongside
20 as soon as possible. Capt. Harrington and Mr. Lee went on board of the schooner to see if they could render her any assistance in stopping her leak. While they were on board, the schooner broke her hawser that was fastened to the steamer and fell astern again about 200 yards, and then sunk. We then lowered one of our boats and went to the place where she sank. We found Capt. Harrington in the schooner's yawl-boat. We carried him on the steamer. He had been overboard, and it was very cold. We then went out the second time, and staid out three-quarters of an hour, looking for the other men, but could not find them. Mr. Lee and two men on board the schooner were lost. I think one of the schooner's men was a colored man. The capt. of the schooner and one of his men were on board the steamer at the time the schooner sunk. We could not see the hull of a vessel that more than 200 yards off. We could see her lights two or three miles off. I couldn't tell what direction she bore when I reported her the second time, but she was coming right for us. She was bearing for our port bow, and coming directly towards us. She bore easterly from us. I saw both lights at the time she struck us. I did see both
21 the lights of the schooner from the second time I reported her until she struck us. The schooner was sailing at a rapid rate when she struck us. She struck with the side of her bow. I had no other duty at that time but to look out for vessels. When I reported the vessel I was about 6 or 8 feet from the stem of the steamer. I had been there nearly two hours. I had not left that position for a moment

during the two hours. The "Lucille" is a propeller. I suppose a propeller going at the rate of 7 or 8 miles an hour could be stopped perfectly still while a sailing-vessel with a good whole-sail breeze, free wind, could run 150 yards. I should judge that the Lucille was not making any head, from the time she was stopped.

When the schooner struck us she was heading across the bay; he' head toward the southwest. She struck us making less than a right angle with our boat—our boat heading down the bay. The schooner had on mainsail, jib, and foresail, without reef in them when she struck us. I did not notice whether she had other sails. I do not know which way the tide was running. The schooner swung right astern of us as soon as the collision occurred. Our boat was not going any at the time of the collision.

Cross-examined:

22 Just previous to the collision there was on the deck of the steamer, Mr. Lee in the pilot-house, the man at the wheel, and myself, as far as I know. I suppose we were going down the bay at the rate of 7 or 8 miles an hour. The second time I saw the schooner's light I could not tell how far she was off. I think I saw her once or twice after this, but could not tell how far she was off until I reported. The steamer was stopped as soon as possible after I reported the schooner the second time. The officer in charge of the vessel heard me when I first reported the schooner. I heard no order given for the vessel to stop. I heard bells ring. The bells were rung immediately after I reported the second time.

EDWARD CONWAY.

*Deposition of George Burrell, a witness for the respondents, taken before John S. Hanan, United States commissioner, at Baltimore City, the 27th day of February*, 1869.

I am a seaman, engaged in fishing in North Carolina at this time. I have been going to sea for eleven years. I was on board the steamer Lucille on the 19th and 20th of December, 1868, when the collision occurred between said steamer and the sch'r Champion. I was a seaman on

23 board the Lucille at that time. The steamer Lucille left Baltimore on Saturday, the 19th of December, about 5 o'clock p. m., bound for Wilmington, North Carolina. The Lucille is a steam sea-going ship, and has a capacity of about 500 tons, I believe. The Lucille, on her trip down, had two side-lights and a mast-head light. The starboard-light was green; the port-light was red, and the mast-head light was a white light, globe lamp, giving light in every direction. I noticed the lights before and at the time of the collision. They were burning well and gave good light. Nothing occurred on the voyage down until about 2 o'clock Sunday morning, the 20th inst. About ten minutes before two the man on the lookout reported a light on the port-bow. The officer, Mr. Lee, said, "All's well, he had seen it." Mr. Lee went immediately to the captain's room and called him. Mr. Lee then returned to his post and waited till the captain came. The captain came in the pilot house, and the man on the lookout reported her again. She was then about two points forward the beam. The capt. looked out of the pilot house and said she was clear of us, all well. About two minutes afterwards the man on the lookout asked the captain if she saw that vessel and what she was doing, and the captain said "My God, what is he doing?" and rang the bell to stop the steamer

24 and back her, and ordered me to put the wheel to port. The schooner then struck us on our port bow with her starboard bow, about one minute and a half afterwards. She the' dropped astern gradually, her head being almost to the wind. The captain went out and asked what damage was done, and the reply was she was sinking and wanted us to come alongside. The captain of the steamer told the captain of the schooner to lower his sails and he would come alongside, and ordered one of the boats to be lowered. He went alongside of the schooner and made a line fast to her, and the captain and Mr. Lee went on board of her. The schooner sunk in about an hour after the collision. I was at the helm from 12 o'clock till the time of the collision, and was there when the light was first seen, and at the time of the collision. We were steering south by east, half east, when the light was first seen. I steered that course until I was ordered to put the helm aport. When I first saw the schooner I saw her port-light only, and she was about a point and a half on our port bow. When I first saw her light I suppose she was about a mile off. I judge she was steering the opposite course from us. If she had kept that course she
25 would have passed us and five ships between us could have passed. When I saw her coming towards us she had changed her course. At that time when I saw her I had to look just forward of our beam, that is to say, about in a east-southeast direction. The schooner had mainsail, foresail, and jib up. I don't know whether she had any more sail up. The wind was to the southward and eastward, about southeast. The Champion was bound up the bay. It was a moderate breeze blowing. We could see a light of that description about a mile and a half. The night was neither light nor dark. At the time I saw her coming towards us a collision could not have been avoided. If we had not stopped her and put the helm aport the schooner would have struck us ab*af* the beam and square on. The steamer had no headway at the time of the collision.

Cross-examined:

After the collision the red light was taken down to enable the captain to examine the leak in the schooner. We were ordered to clear away the boats to see if we could'nt save lives. I went out the pilot-house door, and as you go out the reflection of the lights strikes you right in the face; that is the way I observed they were burning. Mr. Lee's watch was the same as mine. The second officer takes the captain's watch usually. The second officer's watch for the captain com-
26 menced at 4 o'clock. The reason that Mr. Lee called the captain, I presume, was according to sickness. I can't say confident*al*ly that Mr. Lee was sick. He did not tell me so. At the time of the collision the captain was in the pilot-house. He had been there about half an hour. When the captain first came in the pilot-house the schooner Champion was distant from us about ¾ of a mile forward of the beam. Mr. Lee did not remain in the pilot-house after the captain came. I don't know where Mr. Lee went. When the captain rang the bell to stop the steamer, and ordered me to port the help, the schooner was about 30 yards from us. I saw the schooner's sails distinctly when she was 300 yards from us. The stem of the schooner did not strike us; it was the side of her bow. It was a glancing blow. Previous to the captain's ordering us to stop we were going at the rate of about 6 or 7 miles an hour. I did not see any vessels on the bay that night but the Champion. I know that the schooner changed her course, because, when I first saw her, she was sailing up the bay, and, just before she ran into

us, she was sailing across the bay. I could tell she was coming across the bay by the way she was laying. The schooner, after she had changed her course, must have been steering in a westerly di-
27 rection. When I first saw the schooner she was not boomed out; she had the wind on her quarter; the sails were on her port side. I can give no other evidence or reason for saying that the schooner had changed her course except what I have already given.

G. BURRILL.

*Deposition of Noah T. Stirling, a witness for the appellees, taken before Isaac Brooks, jr., United States commissioner, at Baltimore City, the 14th day of November*, 1869.

My name is Noah T. Stirling. I am in my twentieth year, and I reside in Matthews County, in the State of Virginia. My occupation is that of following the water, and I have been so engaged for the last three years—a part of the time I was master of a vessel. Last December I was master of the schooner Champion, and had been so a month or two, perhaps more. I left, as master of the Champion, from Milford Haven, on the Piankatank River, about ten o'clock in the morning of Saturday, in December, A. D. 1868; the precise date I do not remember, but it was the day before the collision of the Champion and the steamship Lucille. The morning I left the wind was about north.
28 I beat out the river all that day, and got into the bay about eleven or twelve o'clock in the day, and was then becalmed until about sunset. The wind then sprung up, about east, and blew a pretty stiff breeze until about one o'clock the following morning. Then the wind began to die out, and so continued until the collision with the steamer Lucille, when I had scarcely sufficient wind to fill the sails, and the wind was east-southeast at the time of the collision. When I first saw the steamer, to the best of my belief, she was about half a mile off. She was bearing about N. N.W., one-half west from us. When we first saw her we were steering north by west, and had been on this course about four hours. We did not change our course but steered the same. The sails were bearing on the port side of the schooner, and had been from about six o'clock in the evening until this time. They were on the port side when the collision took place. No sail, from the hour of six o'clock till the collision, had been on the starboard side. If the course of the Champion had been changed so that she headed west, her sails would have shifted to the starboard side. I was at the helm of the vessel at the time of the collision, and had been at the helm about
29 one hour previous thereto; we had a lookout stationed at the time whose name was John Powell; he was about thirty-five years of age, and had been following the water pretty much all his life, and has been in charge of vessels himself often. He was standing forward of the foremast at the time of the collision, and had been there an hour I reckon. I saw some lights at this on our starboard side, and I think there were some astern. We had a green and red light up in the forward rigging, a little over eight feet above the deck. The green light was on the starboard side and the red on the port side. Our crew consisted of three men, and there was a passenger on board. The passenger and our cook, Hudgins, were drowned at the time of the collision. My vessel was loaded with oysters and we were bound for Baltimore. The steamer struck the Champion on our starboard bow, about the 'night-heads, and ripped her open forward, carrying the bowsprit right around. My sails then gibed over on the starboard side, and the main-boom struck the side of the steamer; the steamer still going on until the

main-boom got to one of the steamer's davits, and then glanced into the after chain-plate, and broke the main-boom in three pieces, leaving the end of the boom sticking in the steamer, between her chain-plates and the steamship, wedging the chain-plate off. The steamer went on
30 about three hundred yards down the bay from me. I then hailed her and told her to come back, that I was in a sinking condition. She came back, and within fifteen yards to on mys tarboard side and threw me lines, one of which I made fast forward and the other aft. Then, when I was lashed fast to the steamer, her captain and mate came on board my vessel, bringing his lantern forward where I was. The captain asked, "What damage was done?" I replied to him, "That there was no use then in talking about damage, that he had better cast off from me at once or we would all go down together." Then I took my books and a small bundle of clothes and went on board the steamer, where I found my mate, he having already boarded her, leaving the captain of the steamer, his mate and one of my crew and the passenger that was with me, on board the schooner. They staid aboard of her until she sunk with them, which was directly after I boarded the steamer. Three lives were lost, one of my crew, the passenger, and the mate of the steamer; and the captain of the steamer came very near being lost. From the time I saw the steamer until we collided the course of the Champion was not changed. The bow of the steamer—I mean her stem—struck my vessel. The Champion was owned by Washington Respass, Thomas Turner, William H. Respass, and Major Evans, ow'ing one-
31 fourth each, and they all reside in the State of Virginia. At the time of the collision the schooner, I think, was worth twenty-eight hundred dollars. I paid for a fourth of her four hundred and fifty dollars, but being under age I got my uncle, W'm H. Respass, to hold my interest. I cannot say what expenses were put on her after her purchase, but I suppose it was from three hundred and fifty to four hundred dollars. The cargo belonged to Washington Respass and myself, one-half to each. The schooner was in pretty good order when she was struck. She was pretty tight and strong, although she leaked a little. Her cargo consisted of nine hundred bushels of oysters, and they were engaged for seventy-two and a half cents per bushel. The schooner and oysters were a total loss. The oysters would not live, confined in the schooner and sunk, more than ten or twelve days, and the schooner could not be raised. The collision took place about five or six miles from Cove Point, the Point bearing about S. W., in between six and seven fathoms of water, and occurred about one o'clock at night. Our vessel had the mainsail, foresail, and jib set. Our vessel was about 31 tons, I think, but the papers were sunk. We had to the other lights mentioned, one in the binnacle, where the compass was, which is in the stern; the light and compass sit on the after part of the trunk. The light is only
32 intended to see the compass by. Our compass was in good order; there was nothing the matter with it that I know of. We had it repa'red the trip before. The binnacle usually sits in vessels, day and night, on the after part of the trunk. James Respass, colored, was the name of the passenger lost; he was a married man, I think. I think he was generally reputed to be a married man; he lived with a woman named Nancy Respass; he was considered to be married. I think he had four or five children, if I am not mistaken. The children were small; none of them were large enough to work for themselves. I don't suppose the eldest was over 10 or 12 years old. I think he was a sober, industrious man. I never knew him to be drunk. Nancy Respass and his children, I don't think, had any other means of support but his labor,

because the people where she lived helped her some. Some gave her corn & some clothes.

Cross-examined:

I have known James Respass from 8 to 9 years. I am now in my twentieth year. I have lived in the neighborhood of James Respass these 8 or 9 years. I recollect him living with Nancy Respass six years; how much longer he lived with her I do not know. I know nothing about their marriage, except what I
33 have stated The cook, Hudgins, was in the cabin on the night of the collision when I first saw the steamer. He remained there until a few minutes before the steamer ran into us. When I first saw the steamer she was about half a mile off. The light in the binnacle was white; it was a small globe light. It does not show its light in front, but aft. When I first saw the steamer I think I saw both her red and green lights and the white light. I think I may be mistaken in this. I kept looking first at the steamer and then at my compass, to see that my vessel did not get off her course, until the steamer got to us. Powell remained at the bow until just as the steamer was about to strike. After the collision we were by the side of the steamer a quarter of an hour—it might have been less—before our vessel sunk. James Respass was standing, both before and about the time the collision took place, amidships. After the collision I did not pay much attention to him, but he went into the cabin the same time I did, after his clothes, and, I think, he came out behind me. When he went *went* into the cabin we were then by the side of the steamer. I suppose we had been there something less than a quarter of an hour. This was after I told the captain that there was no use talking about damages; that he had better cast off, or that we would all go down together. I got on board the steamer after I came out of the cabin, and told Respass to follow after me. I don't think I ever saw him again, be-
34 cause I had just stepped on the steamer when our vessel broke the steamer's lines and sunk. If we had both started, when we started to go into the cabin, to go on the steamer, I suppose we would have got on the steamer safely.

Re-direct:

After the collision I saw where the steamer struck us. The effect was to rip us right open fore and aft. I mean by fore and aft that the direction of the rip was from forwards towards aft, and not cross-wise.

NOAH T. STIRLING.

Subscribed and sworn to before me this 16th day of November, 1869.

ISAAC BROOKS, JR.,
*U. S. Comm'r.*

*Deposition of John B. Powell, a witness for the appellee, taken before Robert Lyon Rogers, United States commissioner, at Baltimore City, the 6th day of November,* 1869.

I am thirty years of age; reside in Matthews county, Virginia, and my occupation for the last 18 years has been that of a sailor, and I have been in command of vessels. I have been a sailor, principally, during this time, on the Chesapeake Bay and its tributaries. In Decem-
35 ber, A. D. 1868, I was mate on the sch'r Champion, which hailed from Yorktown, Virginia. The sch'r Champion left Piankatank River, Milford Haven, somewhere about the 18th or 19th of De-

cember, A. D. 1868, freighted with a cargo of between nine hundred and one thousand bushels of oysters, bound to the port of Baltimore. When we left on the voyage, Noah T. Stirling was master, I was mate, and Walter Hudgins and James Respass were on board. James Respass was a colored man and a passenger. We left Milford Haven Saturday morning early, about six o'clock, I think. We got into the Bay somewhere between twelve and one o'clock, I should think. It was moderate weather when we reached the bay, and towards night we caught a little breeze from the east, and after a while it changed to about east-south-east. We kept on up the bay, steering north by west. I don't know exactly when we saw the steamer Lucille, but I should think it was about 12 o'clock, midnight, or one o'clock Sunday morning. We were then heading north by west. When we first saw the steamer I should judge she was about a half a mile off. We saw her starboard light—a green light. We had a red light in the rigging on the port side, and green light in the rigging on the starboard side. The lights were elevated from the deck from eight to ten feet. The steamer
36 bore from us, when we first saw her, about northwest. I was forward, on the lookout, forward of the fore-mast. I had been on the lookout about 2 hours and a half, and perhaps longer. I cannot state the exact time. I was about six or seven feet from the stem of the schooner. When I saw the steamer I reported it to the captain, and told him to hold his course. The captain was at the helm and had been there during the time I had been on the lookout. The captain held his course, I believe; I don't think he altered it any. The sails of the sch'r were on the port side, and had been there all night. The Lucille struck us with her stem on our starboard bow, just aft of the 'night-head and forward of the fore-chains. When she struck us it slewed our bow round and caused our main-sail to jibe over, and our main-boom struck her boats' davits, and ripped one of the davits off, and kept on to his chain-plates, breaking off the bow and tearing a piece in there, which was there the next morning and had to be cut out. I am positive our sails were on the port side when we first saw the steamer, and also when the collision took place. The schooner was bu'st open forward, and sunk in about fifteen minutes, and three men were drowned, Walter Hudgins and James Respass, on the schooner, and the mate of the steamer. I
37 had no other duty to perform than that of lookout while I was forward, as I have stated. If the schooner had changed her course as far around as west, her sails would have jibed and gone over to starboard. The steamer, when she struck us, I should judge, was heading about southwest.

his
JOHN B. + POWELL.
mark.

Subscribed and sworn to before me this 6th day of Nov., 1869.
ROB'T LYON ROGERS,
*U. S. Commissioner.*

Being re-examined by the proctor for the appellees, the witness deposeth and saith as follows:

"We had hardly any wind at the time of the collision. We were making from two to three miles an hour. I can say positively that the course of the Champion was not changed after we saw the steamer."

Being cross-examined by the proctor for the appellants, the witness deposeth and saith as follows:

"If the course of the Champion had been changed I could have told it by her sails. Before I could have told it by her sail the course would have to have been changed a half-point about. I recollect looking at the sail to see if the course was changed. I was forward, and if
38 the course had been altered any the jib would have swung in if he had kept off; and if he had luffed it would have swung off."

Being re-examined by the proctor for the appellees, the witness deposeth and saith as follows:

"The best position for a lookout to be was forward of the foremast."

his
JOHN B. + POWELL.
mark.

Subscribed and sworn to before me this 6th day of November, 1869.

ROB'T LYON ROGERS,
*U. S. Commissioner.*

*Deposition of William S. Harrington, a witness for the appellants, taken before Isaac Brooks, jr., at the city of Baltimore, on the* 18*th day of October*, 1870.

I reside in Baltimore. I am a mariner. I was in command of the steamer Lucille in Feb'y, 1867, and remained in command of her until March, 1870. She was engaged in running from Baltimore to Wilmington, N. C., while I was on her. She was a steam-propeller, 514 tons burthen. I recollect the trip of the st'r Lucille from Baltimore to Wilmington, when the collision occurrid between the steamer and the schooner Champion. It was in December, 1868. We were on
39 our trip down the Chesapeake Bay. We had a fair but not a full cargo on board. I had a first and second officer and four seamen on deck, and a chief and assistant engineer, one oiler, three firemen, and two coal-passers, a cook, and steward. The collision took place between Cove Point and James Point, about four or five miles north of the Patuxent River. It was in the middle of the bay. Between one and two o'clock the first officer came to my room and called me up, and asked me to relieve him, as he felt very unwell. I immediately got up and went into the pilot-house. He reported to me a vessel with a red light coming up. I saw her, and I told him I would look out for her; that he could go below. I kept an eye upon the vessel. She was coming up all right when suddenly my lookout said the vessel had changed her course, or was coming into us, or something to that effect. I cannot state the exact words. I saw, then, that she had changed her course by seeing both of her lights. She was sailing directly for us. I gave orders to the man at the wheel to put his wheel hard a-port, and I rang the bells to stop and back the steamer, which was immediately done. The schooner was then close to us, making a circle—coming around all the time, and she struck us just forward of our fore-chains. I
40 asked the captain of the schooner if he was hurt any; she was then laying alongside of us. He said that he was sinking. I told him to lower his sails, and I would come alongside again. In the mean time, while we were talking, we had drifted apart. I got alongside as soon as I could, and my first officer jumped on board of *him*, and made her fast alongside, and took a lamp and went aft and looked in the cabin, and then came forward, looking all around the deck while he was there. I requested the men to come on board the steamer if she was sinking; finding they did not come, I jumped on board the schooner myself, and again asked them to get on board the steamer. Two of

them did get on board the steamer then; the others remained on the schooner. I then started forward to look for the leak. When the schooner went down with us I found myself overboard, and swam to an object, which proved to be a boat, and I was afterwards picked up by a boat's crew, and was taken on board the steamer. After getting dry clothes on, I came on deck and had some conversation with the captain of the schooner. He told me that he had put his helm hard up. We then proceeded down the bay, and put them off at Fortress Monroe. Mr. Lee,
the first officer, was drowned. The steamer's lights on the night of
41 the collision were in good condition and burning. We had a white mast-head light, and red and green side-lights placed in their proper positions. The collision took place a quarter to a half an hour after I came on deck. We were sailing south, half east, the proper course to take in going down the bay. When I came on deck the schooner was a long way off. She was on our port bow—that is, she was to the eastward and southward. I kept a lookout on her until the collision occurred. I can't say that I kept my eye constantly on her. When I last saw her, before I saw that she had changed her course, she was running on a parallel line, eastward of my course a quarter of a mile at least. It might have been more. When I saw that she had changed her course she was coming right for our fore-rigging—that is about forty feet from the stem of the vessel, or nearly abeam of us. She then seemed to be coming directly across the bay, and in fact was so coming. When I first saw that she had changed her course she was fifty to a hundred yards off. I could see the vessel herself, which I could not do before. She was coming fast. The wind was blowing fresh from south'ard and eastward. I noticed the wind particularly. It was blowing fresh and was cloudy. I went from the pilot-house to the side of the steamer,
when the schooner struck, and had good observation, and saw the
42 schooner strike the steamer. She struck the steamer on her port bow a glancing blow, with the starboard bow of the schooner, just forward of the fore chains, about 25 feet abaft the stem of the st'r. The schooner dropped alongside, with her head towards the head of the steamer. I' was then that the first conversation took place between the capt. and me. There was plenty of chance for any one on board the schooner to have gone on board the steamer. As near as I can judge, there was a half an hour that we were alongside of each other. I never saw anything but the port-light of the schooner until she changed her course.

Cross-examined:

The Lucille is a propeller. Her speed is about eight knots an hour. Before I rang the bell to stop her she was making her usual speed. The night was cloudy, but could see lights very well. When I spoke to the men they were on the deck of the schooner. The green light was on the starboard side, on top of the pilot-house; the red light was on the port side. I do not recollect when the lights were trimmed; they were burning brightly. I saw them myself. They were not trimmed while I
was on deck. It was the business of the wheelsman's to trim the
43 lights. My first officer and the man at the wheel were in the pilot-house when I first came on deck. I cannot tell what course the schooner was running when I first saw her. I judge she was running a course opposite to ours, from the appearance of her lights.

Re-direct:

Edward Conway was on the lookout the night of the collision. He was a competent man for that post.

Re-cross:

The lookout was stationed right forward on the foreward deck. He had been there, I judge, from 12 o'clock. The collision took place between one and two o'clock.

WILLIAM S. HARRINGTON.

Subscribed & sworn to before me this 18th day of October, A. D. 1870.

ISAAC BROOKS, JR.
*U. S. Commissioner.*

*Deposition of Robert A. Courtney, a witness for the appellant, taken before Isaac Brooks, J'r, United States commissioner, in Baltimore City, on the 2d day of November, 1870.*

My name is Robert A. Courtney. I have been a seafaring man
44 for the last fourteen years, and have been steamboating for the last ten years. I know the steamer Lucille. I was on her about 27 months. I was two years mate of her. I was second mate of her in the month of December, 1869, when the collision occurred between her and the Champion. I was present on board of her, in my room asleep, at the time of the collision. I came on deck after the collision. When I came on deck the Champion had not sunk, and did not sink for a half to three-quarters of an hour afterwards. The captain and one man came on board the Lucille from the Champion, after the collision, before the steamer sunk. After the capt. of the Champion came on board, I asked him if he did not put his helm up. He said that he did put it up. I don't recollect anything else that he said. The wind being southeast, if he did put his helm up, the effect of this would have been to have brought the schooner in contact with the steamer. Putting the helm up means putting it to the windward.

Cross-examined:

When the steamer was struck, from what I could learn, (I was not on deck myself, and therefor' do not know,) the course the steamer was heading was west-southwest. I can't tell what way the schooner was heading; it is impossible for me to say. The wind was about southeast.

45 Re-direct:

My testimony in regard to putting the helm up, and the effect of it, was given upon the supposition that the wind was as I have stated it, and the two vessels running opposite courses, one up and the other down the bay, and the steamer going down on the west side, and the schooner coming up.

Cross-examination:

It is all supposition with respect to the courses, as I was in bed and knew nothing about them.

R. A. COURTNEY.

Subscribed & sworn to before me this 2nd day or November, 1870.
ISAAC BROOKS, *Jr.*, *Comm'r.*

And afterwards, to wit, on [the 5th day of January, in the year of our Lord one thousand eight hundred and seventy, the circuit court here made and passed the following decree, to wit:

*Decree.*

In the circuit court of the United States, fourth circuit, district of Maryland.

| | |
|---|---|
| STEAMER LUCILLE *vs.* WASHINGTON RESPASS AND OTHERS. | Appeal from district court of Maryland. In admiralty. |

46 This cause being ready for hearing and having been argued by counsel and fully considered, it is thereupon, this fifth day of January, A. D. 1871, adjudged, ordered and decreed that the decree of the said district court be and the same is hereby affirmed, with costs.

HUGH L. BOND.

From which said decree so as aforesaid passed the said owners and claimants of the steamer Lucille, by their proctor, aforesaid, in open court here, have prayed an appeal to the Supreme Court of the United States to be held at the city of Washington, on the first Monday in December next, and to them it is granted.

*Appeal bond.*

Know all men by these presents, that we, D. J. Foley and Thomas Corner, jr. are held and firmly bound unto Washington H. Respass, Thomas Turner, and William H. Respass, of Matthews County, Virginia, and Noah T. Stirling, by William H. Respass, his next friend, and Evans, of Accomac County, Virginia, owners of schooner
47 Champion, in the just and full sum of five thousand six hundred dollars, lawful money of the United States, to be paid to the said obligees, their heirs, executors, and administrators or assigns, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 14th day of January, 1871.

Whereas at a district court of the United States in and for the Maryland district, begun and held in the city of Baltimore on the first Tuesday in March, in the year of our Lord one thousand eight hundred and sixty-nine, the said Washington H. Respass, Tho's Turner and William H. Respass, of Matthews County, Virginia, and Noah T. Stirling, by William H. Respass, his next friend, and Evans, of Accomac County, Virginia, by the decree of the same court recovered against the steamer Lucille the sum of two thousand eight hundred dollars for their damages by them sustained, as in their said libel is set forth, together with their costs and charges in that behalf laid out and expended, from which said decree so as aforesaid passed, the owners of the said steamer Lucille prayed an appeal to the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday in November, next;
48 And whereas, also, at a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and seventy, by the decree of the said court the said decree of the district court aforesaid was affirmed with costs; from which decree so as aforesaid passed the said

owners of the steamer Lucille have prayed an appeal to the Supreme Court of the United States to be held at the city of Washington no the first Monday in December next:

Now, the condition of the foregoing obligation is such, that if the said owners of the steamer Lucille shall well and truly prosecute with effect their said appeal and pay unto the said Washington H. Respass, Thomas Turner, William H. Respass, of Matthews County, Va., Noah T. Stirling, by William H. Respass, his next friend, and Evans, of Accomac Co., Va., owners of schooner Champion, their heirs, executors, administrators or assigns, the amount of the said decree, costs and charges aforesaid of the said district and circuit courts aforesaid, and all such damages, costs and charges as may be awarded unto them by the said Supreme Court in case the said appellants shall fail to make good their said appeal, then the above obligation to be void, and of none effect; otherwise to be and remain in full force and virtue
48 in law.

D. J. FOLEY. [SEAL.]
THO'S CORNER, JR. [SEAL.]

Signed, sealed, & delivered in presence of—

Thereupon, it is ordered by the court here, that the record and proceedings aforesaid, with all things concerning the same, be transmitted to the said Supreme Court, and the same is transmitted accordingly.

In testimony that the aforegoing is a true and full transcript of the record and proceedings in the cause aforesaid in the said circuit court, I have hereunto subscribed my name and affixed the seal of the said circuit court this 22nd day of November, in the year of our Lord 1871.

[SEAL.] JAMES W. CHEW,
*Clerk Circuit Court.*

(Indorsement on cover:) No. 453. The steamer Lucille, James A. Garey, president, &c., claimant, appellant, vs. Washington H. Respass, Thomas Turner, N. F. Stirling, by his next friend, W'm H. Respass, and Evans. Maryland. C. C. U. S. Filed 1st December, 1871.

# SUPREME COURT OF THE UNITED STATES.

STEAMER LUCILLE, JAMES A. GARY, CLAIMANT,

vs.

RESPASS AND OTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

## BRIEF OF THE APPELLANTS.

The libel in this case was filed by the appellees in the District Court of the United States for the District of Maryland, against the Steamer Lucille, to recover damages for the total loss of the Schooner Champion and cargo belonging to the libellants, occasioned by a collision with the Steamer Lucille in the Chesapeake Bay.

The collision occurred opposite Cove Point, about five miles from the shore, about one o'clock, A. M. on the 20th of December, 1868. The decrees, both of the District and Circuit Courts were adverse to the appellants.

The libel states that the Champion was proceeding up the bay on a course N. by W., with a light wind from E., S. E. The steamer was discovered approaching in an opposite direction. The schooner held her course, expecting the steamer to pass her on her starboard side. That the steamer struck the schooner "stem on" on her starboard bow, and caused her to sink immediately, (Record page 21.)

The answer states that the steamer was proceeding down the bay on a course S. by E. $\frac{1}{2}$ E. That the Champion was

seen considerably to the eastward, on the port side of the steamer, sometime before the collision. That the schooner and steamer were running on opposite courses, at such distance from each other as involved no risk of collision, and would have passed each other on their port side, but that when nearly opposite each other the course of the schooner was changed, and by the sudden change she was brought into collision with the steamer, (Record, page 5.)

The depositions of the captain and mate of the Champion do not differ materially from those on the steamer as to the state of affairs immediately before the collision; they only differ as to what occurred in the act of collision. The appellants will insist that if the facts in which those on both vessels concur are true, as to what occurred immediately preceding the collision, that then it must result that it occurred as alleged by the appellants, and not as alleged by the appellees.

Stirling, the captain of the Champion (Record, page 11,) states that he saw the steamer half a mile off. She was then bearing N. N. W. ½ W. from schooner. He was at the helm. Powell, the mate of the Champion (Record, page 13, was on the lookout. Of course his opportunity for correct observation was best. He states that he first saw the steamer half a mile off. That then the steamer bore N. W. from schooner. Conway, the lookout of the steamer (Record, page 7,) saw schooner's light two miles off. She was then well to S. E. of steamer. Saw her port light and reported her to captain. She continued to bear in that direction until her change of course, just before collision. George Burrill (Record, page 9,) was at the helm of steamer. He agrees with the others as to the bearing of the schooner from steamer just before the collision, and with them agreed Harrington, captain of the steamer, (Record, page 15.)

It must then be admitted that the statement of the lookout of the Champion is correct, that when the vessels were half a mile from each other the steamer bore north-west from the schooner. If so at that time, this course, making an angle of forty-five degrees, with an east and west line, the two vessels must have been separated from each other by an east and west line as far as by a north and south line; and the steamer must have been moving on a north and south line more than one quarter of a mile to the westward of the schooner. Their courses

were nearly parallel. The speed of the schooner was said by Powell to be three miles per hour, (Record, page 14,) That of the steamer seven miles per hour, (Record 9 & 10, Burrill and Conway.) Their combined speed was ten miles per hour. The collision must have occurred in three minutes from the time the steamer was seen from the schooner. The theory of the Champion is that she never changed her course. That she was struck by the steamer on her starboard bow, forward the fore chains, at such an angle as to cause her to reverse her course, moving around on her port side.

1st. Is it possible that by any movement on the part of the steamer this could have been accomplished? She must have moved from her position to the north-west of the schooner, changed her course to the eastward, and again changed her course more to the west, and so struck the schooner on the starboard bow. Powell says (Record, page 14,) that the course of the steamer was south-west when she struck the schooner, and this must have been so to have effected the result as stated in the way stated. Independently of the absurbity of such a move it was impossible.

2d. The difficulty of this move would be increased if we suppose the wind was stronger than represented by those on the Champion. Those on the Lucille state that the wind was very fresh. If we credit what was said to be done on the Lucille by Burill, (Record, page 9.,) the improbabilities of the result will be more apparent. He states, that immediately before the collision the helm of the Lucille was put hard a port, and this was the only change that had been made in her course. Upon no supposed state of facts consistent with the testimony on either side could the result have taken place as stated by those on the Champion.

3d. Those on the Lucille state that the Champion changed her course, and came under the bows of the Lucille. This is a consistent theory, and it is the only mode in which the collision was possible. To accomplish this only one change of course on the part of the schooner was necessary. If the wind had more force than those on the Champion represented it, and blew as those on the Lucille stated, this facilitated the movement.

4th. The weight of the direct testimony sustains the theory of the appellants. The captain of the schooner, Sterling, stated after the collision, both to captain Harrington (record page 15,) and to Courtney, (record page 17,) that he had put his helm up just before the collision. This would have effected the result according to the theory of the appellants. This evidence is not contradicted.

5th. The witnesses on the steamer were all looking directly at the schooner, and noted her change of course, and in order to avoid her the helm of the steamer was put a port.

6th. The allegation of the libel that the schooner expected the steamer would pass her on the starboard side is inconsistent with the statements of those on the schooner as to the relative position of the vessels. It shows the direction of their fears, however, and the movement they would likely make to avoid danger. The captain of the schooner was a boy of between eighteen and nineteen years of age. It is natural that in the darkness of the night he should have made this move, obeying the impulse of his fear. He had the impression (a false one evidently) that the steamer was to pass on the starboard side, and made the movement to facilitate it. This confusion is the more probable when it is considered that they never saw the steamer until she was half a mile off, and but three minutes before the collision.

The steamer is guilty of no breach of the regulations for preventing collisions. She had all her lights up. Had a proper lookout; and the schooner was narrowly watched from the time she was two miles off, until she had changed her course. Those on both vessels show that the vessels were not proceeding in such directions as to involve risk of collison. There was, therefore, no necessity for observing the provisions required by Articles 15 and 16 of the Sailing Regulations.

The two decrees of the Courts below are manifestly against the law and the admitted facts of the case, and this Court will not under such circumstances hesitate to reverse them.

The Ariadne, 14 Wallace, 475.

WM. S. WATERS,
*For Appellants.*

# SUPREME COURT OF UNITED STATES.

STEAMER LUCILLE,

vs.

RESPASS, AND OTHERS.

## BRIEF FOR APPELLEE.

Washington Respass and others, filed a libel in the District Court for Maryland against the Steamer Lucille.

It alleged that the libellants were the owners of the Schooner Champion, a vessel of about thirty-one tons burthen; that about the 19th day of December, 1868, sailed from Milford Haven, Virginia, with a valuable cargo of oysters, on a voyage to Baltimore. That on the night of the 20th of December, when the schooner was about five miles from the western shore of Chesapeake Bay, a little above Cove Point, with the wind blowing a light breeze from east south-east; sails being well out on the port side; course of the vessel north by west; she was run into by the Steamer Lucille, a vessel of about five hundred and fourteen tons burthen; that the schooner was struck on her starboard bow, and was sunk, and it and the cargo totally lost, and two of the crew drowned. That the schooner kept on her course without any change before the collision, and that the collision was caused wholly by the gross negligence of the persons having charge of the navigations of the Steamer Lucille. That the schooner was worth twenty-eight hundred dollars, and the cargo, eight hundred dollars.

The steamer was claimed by the Baltimore and Southern Transportation Company. The answer of the president of the company stated that he had no knowledge of the collision ; but on the information of others, he denied that the steamer was to blame.

The District Court condemned the steamer in the sum of twenty-eight hundred dollars, (page 6.) On appeal this decree was affirmed by the Circuit Court, (page 18.)

SECOND.

The concurring decrees of the lower Courts were correct.

THIRD. POINTS.

*First.*—The schooner could not be raised ; the loss was total, and the valuation in the decree was moderate, (Stirling, Orig. Rec. 31.)

*Second.*—The schooner was not in fault. There were four persons on board the schooner at the time of the collision—Stirling, the master ; Powell, the mate ; Hudgins, the cook ; and Respass, a passenger. (Stirling, page 29 orig. Rec.,) and (Powell, page 35 orig. Rec.,) Hudgins and Respass were drowned, (page 37 orig. Rec.,) and the survivors have been examined as witnesses. They give a clear and probable account of the disaster. The wind was east south-east ; it was a light breeze, (pages 28 and 35 orig. Rec.) The schooner was steering north by west, and had been on this course four hours, and did not change her course at all. Her sails were on the port side, and remained there the whole time, (pages 28 and 35 orig. Rec.)

There were on board the steamer, Harrington, the master, two mates, four seamen, two engineers, one oiler, three firemen, two coal passers, a cook and a steward—in all seventeen persons.—(Page 39, original Record.) The first mate was drowned. The master, Harrington, the second mate, Courtney, and two of the seamen, Conway and Burrell, have been examined. Harrington and Courtney (pages 40 and 44, original Record,) say that the master of the schooner told them that he had put his helm hard up. It was not competent to offer such

testimony without first asking the master of the schooner if he had made such a statement.—1st Greenleaf's Evidence, sections 462-3. Stirling, the master of the schooner, a resident of Virginia, was examined in Baltimore, November 14th, 1869, and was not asked this question.—(Page 27, original Record.) On the 18th of October, 1870, Harrington, a resident of Baltimore, was examined.—(Page 38 original Record,)—and in November, 1870, Courtney was examined.—(Page 44, original Record.) Why did not the appellees give Stirling an opportunity to explain this alleged contradiction? Why did they wait for nearly a year after he had left the city, before it was imputed to him? Such evidence is not only incompetent, but it would be an unjust surprise. Conway says, that the schooner changed her course, and put her head to the south-west.—(Page 21, original Record.) It is almost incredible, that a vessel bound up the bay to Baltimore should adopt such a course, unless pressed by the most imminent danger. But it is impossible that the schooner could have changed her course in this instance, because if she had done so her sails would have shifted to the starboard; whereas it is not denied, that they were on the port side the whole time.—(Pages 28 and 36, original Record.) Burrill, witness for the steamer, noticed that the schooner's sails were on the port side, and among all the reasons he gives for thinking that her course was changed, he does not intimate that they were shifted to starboard.—(Page 27, original Record.)

It is not denied, that the schooner when first seen was sailing about north by west, approaching the steamer in an opposite direction.—(Respondent's Answer, page 12, original Record; Harrington, page 43, original Record; Burrill, page 25, original Record.) All the witnesses, without exception, say the wind was southeasterly.—(Pages 19, 25, 28, 35, 41, 44, oiginal Record.) With this course and this wind, the sails were necessarily on the port side, and a change of course to the west would inevitably have shifted the sails to starboard.

*Third.*—Under the circumstances, the duty was cast upon the steamer to keep out of the way.

She failed to take ordinary precautions. She was proceeding on a cloudy night at full speed.—(Harrington's cross-exami-

nation, page 43, original Record.) The look-out was not vigilant. He says, "I did not keep my eye on her."—(Page 19 original Record.) Lee, the officer in charge of the steamer, after the schooner's light was seen, left the deck and went to the captain's room, instead of keeping his attention fixed on the schooner.—(Burrill, page 23, original Record.)

The schooner was two miles distant when first seen.—(Conway, page 19, original Record.) But no effort was made to change the course of the steamer or to stop her, until less than two minutes before the collision—(Burrill, page 24, original Record,) or when the schooner was close at hand—(Harrington, page 39, original Record;) about thirty yards distant.—(Burrill, page 26, original Record.)

Conway (page 21 original Record) and Burrill (page 25 original Record,) say, that the steamer had no headway at the time of the collision. But it is a simple impossibility to stop in the course of two minutes a propeller of five hundred and fourteen tons burthen, running eight knots an hour. She *must have been* making headway, and the blow she gave the schooner turned her round, and caused the mainsail to jibe over.—(Stirling, page 29 original Record; Powell, page 36 original Record.) This is the reason that her head was toward the head of the steamer after the collision. And we cannot adopt the extravagant theory of the appellants' witnesses, that she had so far changed her course as to bring her in that position.

All the facts bring this case within the rule laid down in—

The Carroll, 8 Wallace, 302; and
The Fannie, 11 Wallace, 238.

*Fourth.*—The appellees respectfully ask the Court to allow them such interest, by way of additional damages, as may compensate them for the delay they have sustained in this case.

The collision took place on the 20th of December, 1868.

The libel was promptly filed on the 2d day of January, 1869, and the decree of the District Court rendered on the 12th

day of March of the same year. Ever since that time these appellees have been delayed by successive appeals. The decree of the District Court did not provide in terms that it should bear interest, nor did the decree of affirmance in the Circuit Court. Under these circumstances the appellees are in danger of losing a large amount of interest, and they submit their claim for protection to the equity of this tribunal.

WM. SHEPARD BRYAN,
T. A. SETH,
*For Appellees.*